

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, October 30, 2002, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Gerry Krieser, Roger Larson, Patte Newman, Greg Schwinn, Mary Bills-Strand and Tommy Taylor (Steve Duvall and Cecil Steward absent); Marvin Krout, Ray Hill, Mike DeKalb, Ed Zimmer, Brian Will, Becky Horner, Duncan Ross, Tom Cajka, Greg Czaplewski, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Greg Schwinn called the meeting to order and requested a motion approving the minutes of the meeting held October 16, 2002. Newman moved to approve the minutes, seconded by Carlson and 6-0: Carlson, Krieser, Larson, Newman, Schwinn and Taylor voting 'yes'; Bills-Strand, Duvall and Steward absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

October 30, 2002

Members present: Carlson, Krieser, Larson, Newman, Schwinn, Bills-Strand and Taylor; Duvall and Steward absent.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 3384; PRE-EXISTING SPECIAL PERMIT NO. 27B; SPECIAL PERMIT NO. 1869A, amendment to the KNIGHTS COURT COMMUNITY UNIT PLAN; FINAL PLAT NO. 02028, STONE RIDGE ESTATES 1ST ADDITION; FINAL PLAT NO. 02030, RIDGE POINTE 2ND ADDITION; FINAL PLAT NO. 02034, FALLBROOK 4TH ADDITION; STREET AND ALLEY VACATION NO. 02013; ANNEXATION NO. 02007; and WAIVER OF DESIGN STANDARDS NO. 02019.**

Item No. 1.3, Special Permit No. 1869A, was removed from the Consent Agenda and scheduled for separate public hearing.

Larson moved to approve the remaining Consent Agenda, seconded by Krieser and carried 7-0: Carlson, Krieser, Larson, Newman, Schwinn, Bills-Strand and Taylor voting 'yes'; Duvall and Steward absent.

Note: This is final action on Pre-Existing Special Permit No. 27B; Stone Ridge Estates 1st Addition Final Plat No. 02028; Ridge Pointe 2nd Addition Final Plat No. 02030; and Fallbrook 4th Addition Final Plat No. 02034, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

SPECIAL PERMIT NO. 1869A
AMENDMENT TO THE KNIGHTS COURT
COMMUNITY UNIT PLAN
ON PROPERTY GENERALLY LOCATED
AT SOUTH 60TH STREET AND SOUTH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 30, 2002

Members present: Krieser, Larson, Carlson, Newman, Bills-Strand, Taylor and Schwinn; Duvall and Steward absent.

Staff recommendation: Conditional approval.

This application was removed from the Consent Agenda and had separate public hearing due to a letter received in opposition.

Tom Cajka of Planning staff submitted a letter in opposition from Janet Coleman.

Proponents

1. Gus Ponstingl of Ross Engineering testified on behalf of **Aspen Builders**. This is a request to waive minimum lot width and minimum lot area. The applicant agrees with the conditions of approval. The developer is changing 5 duplex units into 10 single family residential units. This improves the condition of the area. These single family units are more popular at this time and are selling better.

With regard to the letter in opposition, Ponstingl suggested that the issues raised in the letter relate more to the construction of the entire development as opposed to this portion. The developer did not know of those concerns previously and is happy to attempt to resolve those issues.

2. Bob Benes, Aspen Builders, 6120 Village Court, testified in support. The purpose of this amendment is to take duplex units and split them into nice, single family patio homes.

There is an overwhelming need for these single family patio homes. Two of these units have already been pre-sold.

With regard to the letter in opposition, Benes noted the concern about increased drainage in the backs at the north end. In reality, this development has decreased the amount of water that goes through there by 50%. Before any development was started, that was the main waterway or drainageway. Benes showed the drainage plan.

The other concern raised by the opposition was the trees that are being planted. Benes explained that the initial landscape requirements were for 4' Scotch pines, 18 being put around the perimeter. Scotch pines have been determined to be susceptible to diseases so the city has asked that they not be used anymore. Therefore, the developer is considering other acceptable replacements, including 8' white pines which are not as full and as attractive. They will be putting other tree species in as well.

With regard to the fence issue set forth in the letter in opposition, Benes acknowledged that in the back corner there was a fence dispute. There is a fence encroachment onto the Knights of Columbus property. At the time, the applicant chose to let it go and not deal with it. The new owner was informed of the fence issue. The new owner chose to simply let it stay the way it is.

Newman clarified that the lots involved in this amendment are Lots 1 through 10 and they do not abut the property of the person writing the letter in opposition. Benes concurred. There was no testimony in opposition.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 30, 2002

Larson moved approval of the staff recommendation of conditional approval, seconded by Newman.

Larson believes the developer has addressed all of the issues and is aware of the needs that exist.

Motion for conditional approval carried 7-0: Krieser, Larson, Carlson, Newman, Bills-Strand, Taylor and Schwinn voting 'yes'; Duvall and Steward absent.

CHANGE OF ZONE NO. 3379
FROM R-4 RESIDENTIAL TO I-1 INDUSTRIAL
ON PROPERTY GENERALLY LOCATED
AT NO. 58TH STREET AND 120' NORTH OF BALLARD AVENUE.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 30, 2002

Members present: Krieser, Larson, Carlson, Newman, Bills-Strand, Taylor and Schwinn; Duvall and Steward absent.

Staff recommendation: Denial.

Proponents

1. William Olson, appeared on behalf of the owners, **Marvin and Bobbie Armstrong**. The applicants have owned these lots since about 1981 or 1982. The previous owner was Cather Construction, which owned the property since 1953. North 58th Street is located on the east side of the lots; the property is bordered on the north by the Havelock Avenue railroad overpass; on the west by an alley that splits that block; and to the west of that alley is I-1 zoned land also owned by the Armstrongs. The business located on adjacent land to the west is leased from the Armstrongs. The Armstrongs sold the business in 1991 to Peggy Shalla.

Olson submitted an affidavit regarding this issue that was submitted to the City in 1996. The issue with regard to use of the land also came up in about 1991-92. In 1985-86, Havelock Avenue was expanded to the west and the road which used to give access to the lot on the west and the lot on the north was closed.

The existing business, All Road Barricades, uses three of the four lots for storage of its barricades, signs and equipment during the season when they have to store things on-site because the barricades are not in use. That storage time is just starting now. Prior to 1981-82, Todd Co.(sp), an Omaha based company, occupied the land to the west and used the lots for the same purpose. In 1985-86, when the City was redoing Havelock Avenue, the city approached the Armstrongs about closing their access to the north. At that time, an agreement was reached with the city, but, unfortunately, it was not put in writing. The city was going to cut off the north access but the owner wanted to continue to be able to use the lots. The city wanted them to fence the lot with a privacy screen fence, but give the city access because of a manhole on the lots. That was the agreement that was reached and it has been this way since 1985-86.

By 1995, the city had come out twice to declare this as a nonconforming use in R-4 zoning and requested that the equipment be removed from the lots and the lots restored to residential use.

Olson clarified that there is one small rental house on Lot 3, the third lot from the north, which is owned by Marvin Armstrong. Just to the south on the same block there is another house and then south of that there is some kind of halfway house that abuts Ballard.

In 1995-96, this issue came up again, an agreement was reached and the complaint was dismissed on the condition that rezoning be requested. The owner talked to the Mayor and it was again worked out at that time without any rezoning. The then Mayor believed the use was grandfathered.

In 2001, the city approached the current lessee, Peggy Shalla of All Road Barricades, about the same problem, which has lead to this change of zone request. Olson had agreed with the Building & Safety to apply for a change of zone.

Olson then addressed the staff recommendation of denial. He pointed out that except for Lot 3, these lots have never been used for residential purposes. They have always been used for commercial and/or industrial use, first by the city as part of the old turnaround for the street car system. Returning the property to residential use does not make sense.

In addition, Olson pointed out that there is industrial zoning to the north and to the west, and the access to this land is through the alley across existing I-1 zoned property. This business does not use 58th Street for access, thus there is not a traffic issue. Any access for this property is as it is now--across the alley, going onto the west property and then down off of Ballard.

Olson then displayed photographs of some of the surrounding uses and what is stored on the property.

Olson agrees that No. 58th is not designed for industrial traffic, but this business does not want to use No. 58th Street.

Olson pointed out that the adjacent property is and has been zoned I-1. There is not a fire hazard there. This applicant is not asking for utility access. This is a request for zoning to conform to the current use.

Carlson sought confirmation that the applicant owns the house on Lot 3. Olson responded in the affirmative, indicating that the house is rented. There are two properties north of Ballard that are not owned by this applicant.

2. Peggy Shalla, 7611 Roose, President of **All Road Barricades**, located at 5700 Ballard, testified in support. She leases three of the four lots for equipment storage. She purchased the business from Armstrong. All Road Barricades is a traffic control company providing equipment to the city, Lancaster County, private companies and other agencies. As the road

construction season winds down at this time of year it is necessary to have space available for storage of the equipment. The subject lots are fenced on the east and south with a 6' privacy fence; the property is bordered on the north by the overpass and railroad tracks; the block is split by the north/south alley and the lots abut the alley on the west. All Road Barricades abuts the alley. Shalla has used the lots continuously as commercial since she purchased the business. She was told that the property had been used for commercial purposes for many years. She has experienced periodic problems with the city over the use of the lots. It was her understanding that the problem was solved in 1996. The original suggestion for rezoning came from the city. Shalla has never had a complaint from a neighbor. The business does not use 58th Street for access. If Shalla is not allowed to continue to use these lots, she will have to move the business.

3. Marv Armstrong, owner of the property, testified in support. At the time that the access was closed off, the fence was installed at the request of the city. He also made sure the city had access to the manhole. He does not believe the city has ever used the gate that he put in for them off of 58th Street. The city used the access through the parking lot. He has never been told what the complaint was.

There was no testimony in opposition.

Carlson noted that this is a request for I-1 zoning. He inquired of staff as to whether there is other zoning that allows storage of materials. Becky Horner of Planning staff did not know; however, she believes the commercial districts allow it. Carlson wondered about special permitted uses for storage in a residential zone. Ray Hill of Planning staff does not believe there is a provision for open storage of commercial uses in a residential area. The closest thing would be like a parking lot.

Carlson then inquired about the potential to relinquish access to No. 58th. Hill believes this would be a problem because all lots are to front upon and have access to a public street. Taylor referred to the Comprehensive Plan and asked whether the Comprehensive Plan designates this as residential in the year 2025. Horner indicated that it is identified as residential in the Comprehensive Plan. It was also identified as residential in the 1994 Comprehensive Plan and was not changed in the new Plan.

Horner clarified that this is not a "nonconforming" use as stated by the applicant. The property's nonconforming use status was relinquished in 1981. Open storage in these districts was to be discontinued within 2 years after the 1979 zoning update.

Taylor believes the areas to the north and west are I-1 areas. Horner clarified that the I-1 zoning allows a higher intensity use, and if the property is zoned I-1, the city cannot regulate it if it is a permitted use and it could require a larger water main or greater thickness of the road system. This change of zone would permit any I-1 use if the property were sold in the

future. Taylor asked whether I-1 zoning would make it necessary for this owner to make a change in the drainage pipe. Buff Baker of Public Works believes the question is whether the 6" water system can handle the use that exists. The answer would be yes; however, design standards state that for industrial uses, the 8" water main and the oversized paving are a requirement of those design standards. Taylor then asked whether Public Works would require that this owner make adjustments to the water main if this change of zone is approved. Baker indicated that would be the Public Works recommendation so that if the use did change to another I-1 usage, the facilities and utilities would be in place to handle that use change.

Newman asked for a list of the I-1 uses. Horner indicated that the I-1 zoning code does not provide a list of permitted uses. But rather, it lists those uses that are not allowed, i.e. a church, library, school, indoor theater or residence, except for resident watchmen and caretakers or supervisory personnel employed and residing on the premises.

Schwinn queried whether the change to I-1 would require them to stop using the house as a residence. Horner offered that dwellings existing on the effective date will be considered nonstandard; however, she does not know when the house was built. Schwinn believes that they can continue to use the house as long as it doesn't burn down. Horner agreed.

Response by the Applicant

Olson assured that this property would not be used for something like a meat packing plant. He cannot see anyone doing anything even similar to a meat packing plant because the property is not big enough to accommodate a smokestack type industry. It would have to be something low intensity in terms of use. The purpose of this request is to bring the zoning into conformance with the existing use. He agreed that the 1979 zoning update required getting rid of open storage in 2 years. However, in 1985, when the city inspected the site, they asked the owner to build the fence around it and it would be okay. Again in 1996, the Mayor's office said the owner was grandfathered. This property has been in commercial use since 1953. The water main issue is not an issue right now. If the use changes, something may have to be done about it. The roads are not an issue. 58th Street is not an issue. It is not used for access and they do not intend to use it in the future. The natural access is off the lot to the west across the alley and onto Ballard Avenue anyway. As a practical matter (maybe not as a legal matter), the use of that property is limited as to what you can do with the I-1 zoning.

Schwinn observed that there is a "great big factory out there called Goodyear", right across the street to the west.

Taylor again referred to the Comprehensive Plan designation of the whole area as residential. Horner clarified that the existing industrial uses are shown as industrial in the Comprehensive Plan.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 30, 2002

Carlson moved to deny, seconded by Newman.

Carlson stated that he is sympathetic to the storage use, but he doesn't believe the zone should be changed.

Taylor will vote against the motion. He has been in the area and with Goodyear and the railroad track, he cannot feature the area being upgraded from what it is. The use in that area appears to be very practical.

Larson agreed with Taylor.

Schwinn agreed with Taylor, also. As far as the concern about the water main, he does not believe any user would take the property knowing that the water was not available.

Motion to deny failed 2-5: Carlson and Newman voting 'yes'; Krieser, Larson, Bills-Strand, Taylor and Schwinn voting 'no'; Duvall and Steward absent.

Taylor moved approval, seconded by Larson and carried 5-2: Krieser, Larson, Bills-Strand, Taylor and Schwinn voting 'yes'; Carlson and Newman voting 'no'; Duvall and Steward absent.

CHANGE OF ZONE NO. 3385
FROM AGR AGRICULTURAL RESIDENTIAL
TO R-1 RESIDENTIAL
ON PROPERTY GENERALLY LOCATED
AT SOUTH 66TH STREET AND PINE LAKE ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 30, 2002

Members present: Krieser, Larson, Carlson, Newman, Bills-Strand, Taylor and Schwinn; Duvall and Steward absent.

Staff recommendation: Deferral

Proponents

1. Brian Carstens appeared on behalf of the applicants and requested a four-week deferral. This will give him an opportunity to resolve the issues on the associated administrative final plat.

Larson moved to defer four weeks, with continued public hearing and administrative action scheduled for November 27, 2002, seconded by Carlson and carried 7-0: Krieser, Larson, Carlson, Newman, Bills-Strand, Taylor and Schwinn voting 'yes'; Steward and Duvall absent.

There was no other public testimony.

PRE-EXISTING USE PERMIT NO. 3AA
TO CHANGE SIGN LOCATION AND SIZE
ON PROPERTY GENERALLY LOCATED
AT COTNER BOULEVARD AND "O" STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 30, 2002

Members present: Krieser, Larson, Carlson, Newman, Bills-Strand, Taylor and Schwinn; Duvall and Steward absent.

Staff recommendation: Approval of adjustments to the ground signs; conditional approval of the ground sign in the front yard setback; and denial of the off-premise sign and small billboard.

Proponents

1. Bill Blake, 1045 Lincoln Mall, appeared on behalf of the applicant, **Westfield Shoppingtown**. This is a request for six signs to identify this property from the streets abutting the perimeter of Westfield Shoppingtown. Blake showed the locations on the monitor. The directional interior signs and wall signs do not require approval by the Planning Commission. The signs requiring approval by Planning Commission are listed as 1A through 1E--all monument signs; and 1B and 1C would both be double-faced.

1A is at the northeast corner of the Westfield property. There is an objection to that sign because it is not on the property owned by Westfield. Blake advised that the applicant will be submitting a letter to Planning and Building & Safety requesting that the location of sign 1A be moved to the west about 100' because then it will be on property owned by Westfield and would be a permissible sign at that location. The monument signs are all approximately 25 sq. ft. instead of the allowed 100 sq. ft., and all are about 5'9" tall.

The applicant agrees to move sign 1B as required by the conditions of approval. Signs 1C, D and E have been included in this request but could have been done by administrative amendment. 1C had to be moved because of the city's O Street widening project.

Blake noted the staff objection to sign 4A, which is 50' tall, which is beyond the height limitations of the district. It is also 250 sq. ft., which is 150 sq. ft. beyond the 100 sq. ft. limit.

This is the sign that Westfield has used for approximately 85% of its centers. It is the type of sign that they typically use for the main identification sign on their main frontage. 4A is the only non-monument sign and would be located on the Westfield property.

With regard to 4A, the pole sign, Carlson wondered whether the applicant is really worried that people won't know where Westfield/Gateway is located. He wondered whether a monument sign would be allowed at that location.

There was no testimony in opposition.

Staff questions

Carlson inquired whether a monument sign would be allowed where the pole sign is proposed. Mike DeKalb of Planning staff advised that they currently have a monument sign right next to this location. It is a 33 sq. ft. ground sign.

If the pole sign exceeds the height and size restriction of the B-5 district, Carlson wondered whether the City Council has the authority to waive those restrictions. DeKalb indicated that the City Council has authority to waive the area and height for ground and pole signs in use permit districts.

Carlson asked whether South Pointe has any pole signs. DeKalb advised that the only pole sign on any of the B-5 districts is the Target sign at Edgewood. All of the other signs for the centers are ground signs.

Newman noted that the applicant is offering to move sign 1A. How should this be reflected in the conditions of approval? DeKalb suggested that if this sign is moved to the west and made a ground sign, Condition #1.1.2 should be amended to read "...adjustment of sign 1A and removal of sign 4A...".

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 30, 2002

Newman moved approval of the staff recommendation of conditional approval, with amendment to Condition #1.1.2: "...adjustment of sign 1A and removal of sign 4A"..., seconded by Taylor.

Schwinn pointed out that this approves all of the signs requested, except the pole sign.

Newman does not believe the pole sign is necessary for identification of the center.

Motion for approval, with conditions, as amended, carried 7-0: Krieser, Larson, Carlson, Newman, Bills-Strand, Taylor and Schwinn voting 'yes'; Duvall and Steward absent.

COMPREHENSIVE PLAN CONFORMANCE NO. 02009,
TO DECLARE SURPLUS PROPERTY;
CHANGE OF ZONE NO. 77HP
FOR A LANDMARK DESIGNATION;
and
CHANGE OF ZONE NO. 3377
FROM P PUBLIC USE TO B-4 LINCOLN CENTER
BUSINESS DISTRICT
ON PROPERTY GENERALLY LOCATED
AT 10TH & "P" STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 30, 2002

Members present: Krieser, Larson, Carlson, Newman, Bills-Strand, Taylor and Schwinn; Duvall and Steward absent.

Staff recommendation: A finding of conformance with the Comprehensive Plan on the proposed declaration of surplus property; and approval of the landmark designation and Change of Zone No. 3377.

Proponents

1. Dallas McGee appeared on behalf of the **Urban Development Department**. This past June, the City Council approved a Redevelopment Agreement for the Old Federal Building between the City and NuStyle Development Corporation, which agreement identified in detail the responsibilities that each of the parties will have in carrying out this redevelopment. In general, NuStyle has agreed to redevelop the building as a mixed use project with residential on the upper floors and commercial on the first floor. The City would sell the building to NuStyle, along with the Comfort Station, and would participate with TIF money generated from the project as well as land sale proceeds. The three items before the Commission today were identified as the city's responsibility in terms of the Redevelopment Agreement.

The first item is to declare the Comfort Station as surplus property. In 1987, the City Council declared the Old Federal Building as surplus. The Comfort Station sits on the southwest corner and was not included in that declaration.

Secondly, the city was identified as the responsible party to pursue a local landmark designation for the Old Federal Building. Preservation of the building was one of the key elements discussed during the redevelopment process. The City identified easements on the exterior of the Old Federal Building and the Comfort Station and easements on key portions of the interior of the Old Federal Building.

Finally, the third action is a change of zone from P Public Use to B-4 Lincoln Center Business District. The P district is typical of city owned property. With redevelopment, Urban Development is requesting a rezoning to B-4 Lincoln Center Business District to be consistent with the surrounding properties as well as the recommended uses for the building.

Larson confirmed that all of these actions are basically to bring the property into conformance with the contract. McGee concurred. These were responsibilities that were identified that the city would need to pursue before selling the property.

Newman asked about the proposed use of the Comfort Station. McGee stated that NuStyle has looked at three possible uses, including a small retail facility, a small office facility and some sort of meeting facility to rent out to groups, but no decision has been made. However, he assured that the Comfort Station will not be removed. There are preservation easements on the exterior of the Comfort Station. The exterior of the building must be maintained.

2. Ed Zimmer of Planning staff presented the application for landmark designation. He emphasized that the Old Federal Building is a building that we know well but there is a lot that we can learn about it. The National Register designation will follow this landmark designation. This building has had an evolution. It was built as the United States Post Office and Courthouse. Moving west of the original building, is a c-shaped building which set the pattern for the whole building that grew over a 4-decade period and was not completed until 1939. The second portion was added over a decade after the first, reconfiguring the interior, yet salvaging the woodwork and marble from the 1905 building to put in the 1915 building. One area that continues to be protected that was constructed in 1905 is the courtroom. The building was completed to its present configuration stretching the full length of P street in 1939, completing the original concept on the interior with a different finish work at each successive construction period. The guidelines being followed are those of the Secretary of Interior standards for historic buildings. We will have the landmark designation as well as preservation easements on the building and the Comfort Station by the time of the closing on the sale.

There was no testimony in opposition.

Public hearing was closed.

COMPREHENSIVE PLAN CONFORMANCE NO. 02009

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 30, 2002

Larson moved to find the declaration of surplus property to be in conformance with the Comprehensive Plan, seconded by Krieser.

Carlson stated that he will vote against the motion because he is disagrees with surplusing the Comfort Station.

Motion carried 5-2: Krieser, Larson, Bills-Strand, Taylor and Schwinn voting 'yes'; Carlson and Newman voting 'no'; Steward and Duvall absent.

CHANGE OF ZONE NO. 77HP

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 30, 2002

Larson moved approval, seconded by Krieser and carried 7-0: Krieser, Larson, Carlson, Newman, Bills-Strand, Taylor and Schwinn voting 'yes'; Duvall and Steward absent.

CHANGE OF ZONE NO. 3377

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 30, 2002

Larson moved approval, seconded by Krieser.

Carlson moved to amend to remove the Comfort Station from the change of zone request, seconded by Newman.

Motion to amend failed 3-4: Carlson, Newman and Taylor voting 'yes'; Krieser, Larson, Bills-Strand and Schwinn voting 'no'; Steward and Duvall absent.

Carlson understands the decisions that have been made on the Old Federal Building, and while he disagreed with those decisions, he acknowledges that the community has spoken on the issue. He is in favor of doing what is best for the building and he intends to support the redevelopment and do whatever it takes to make sure the building is taken care of and that the project is a success.

Motion for approval carried 7-0: Krieser, Larson, Carlson, Newman, Bills-Strand, Taylor and Schwinn voting 'yes'; Duvall and Steward absent.

SPECIAL PERMIT NO. 1990,
HERITAGE LAKES DAYCARE FACILITY
and
WAIVER OF DESIGN STANDARDS NO. 02021
TO ALLOW NON-PERPENDICULAR LOT LINES,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 91ST STREET AND HERITAGE LAKES DRIVE.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: October 30, 2002

Members present: Krieser, Larson, Carlson, Newman, Bills-Strand, Taylor and Schwinn; Duvall and Steward absent.

Staff recommendation: Conditional approval of the special permit and approval of the waiver request.

Proponents

1. Steve Clymer of Olsson Associates appeared on behalf of the **Heritage Lakes Early Childhood Center** and agreed with the Planning staff recommendation and conditions of approval, except Condition #1.1.5 and #1.5, which is the provision to show an internal driveway connection to the adjacent lot. The applicant agrees with the recommendation to deny the waiver of the sign requirements.

Clymer explained that the applicant will agree to a future internal connection if it is required; however, there is a one-way drive coming in from the south on the east driveway which exits back out to the south on the drive to the west. There is an isolated parking lot at the northwest corner of the site, adjacent to and abutting the outdoor play area. This is also an area where there will be a lot of drop-off. The developer is concerned about making a connection into any apartments that are to the north because it could turn into a shortcut to go through the area where children will be unloading. If this connection is required, the developer would request authority to install speed bumps in this parking lot to slow the traffic. The requirements in the design standards asks for off-street parking. By providing this connection, it will result in being a street and there will be on-street parking. More than half of the children using the day care center will be coming from the Nebraska Heart Institute as opposed to from the apartments.

Larson confirmed with the applicant that the only objection is the internal driveway. Clymer concurred. The applicant requests to delete Condition #1.1.5 and #1.5. If they are required to make a connection, it would probably end up coming out of the north part of the lot.

Carlson inquired whether the developer anticipates an apartment development between 91st and Heritage Lakes Drive. Clymer pointed out that Nebraska Heart Institute is across Heritage Lakes Drive, and the property surrounding this day care is zoned R-3 Residential

and will probably end up being apartments. He acknowledged that the Comprehensive Plan talks about connectivity to residential areas and that is the purpose of the proposed condition. But this applicant is concerned about people taking shortcuts through the day care parking lot to get to the apartment complex.

Carlson likes the idea of moving around without having to go out on the main street. What about a pedestrian access to walk the children back to the apartments? Clymer believes that would be acceptable to the developer.

2. Julie Delp, owner of Heritage Lakes Early Childhood Development Center, testified in support. She is concerned about the access being granted into the northern area because of security issues and safety of the children. She believes that this access will cause unregulated traffic to converge to the center from all directions. The center will also provide Saturday hours, and she does not want this to be a traffic thoroughfare from the apartments to the Walmart in the southwest corner. At the end of the first year of operation of Nebraska Heart Institute (NHI), it is anticipated that NHI will use 109 of the 134 openings in the day care center. They do not believe there will be a lot of clients coming from the apartment complex. She believes that a pedestrian footpath would be more acceptable. She wants to be able to regulate the traffic. They want to keep the center and the parking away from the traffic.

There was no testimony in opposition.

Staff questions

Newman inquired whether there might be other possibilities to get the connection in the future. Brian Will of Planning staff advised that the outlot surrounding this day care center is part of an administrative final plat that has been submitted. Other than this scheme for the child care center, there is currently no plan on file for the development of the remainder of this lot. It is zoned R-3.

Larson asked staff to explain the objection to deleting the internal driveway. Will explained that the purpose of the connection is to assure that there is some sort of internal connection between this lot and the surrounding outlot. The staff does not want to delete that vehicular connection. The Comprehensive Plan seeks to secure this sort of internal connection among uses. It appeared to be logical that there will be an apartment complex that should not have to drive out to 91st Street to access the day care center. The driveway off of Heritage Lakes Drive is one-way coming off of Heritage Lakes into the drop-off lane. Ray Hill of Planning staff further explained that a lot of the parking is for parents and then they will exit onto Heritage Lakes Drive. There are other options available that would not necessarily have the traffic going by the playground. When the residential development comes in, the city would like to be able to work with that developer on a connection to their street pattern so that there is a way of getting to the day care center without going back out onto the main street for a very

short period of time. Going straight through the parking lot is not the only solution. Larson does not believe the parking lot should be used as a drop off area.

Newman inquired whether the pedestrian connection would be acceptable to the staff. Will indicated that it would not.

Taylor inquired about speed bumps. Will does not believe the city would have a problem with that. The intent is only to provide vehicular access, not a street.

Carlson asked why the pedestrian connection would not be acceptable. Will indicated that the staff has not discussed that specifically. It is believed that most people will be driving to drop off and pick up the children.

Will requested that the Commission revise Condition #1.1.1 to add, "and show all parking spaces required at full buildout".

Response by the Applicant

Clymer agreed with the amendment to Condition #1.1.1 as requested by the staff. It is currently the intent of the owner to put in all of the required parking stalls for the full buildout. They probably will not have any phasing on the parking, but they will be phasing the building.

Tim Gergen of Olsson Associates indicated that the internal driveway would cause problems with the site plan due to the necessity to show all the parking spaces required at full buildout.

Clymer would not be opposed to providing the pedestrian connection.

Public hearing was closed.

SPECIAL PERMIT NO. 1990

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 30, 2002

Larson moved approval, with conditions, with amendment to Condition #1.1.1 as requested by staff, and with amendment deleting Condition #1.1.5 and Condition #1.5, seconded by Bills-Strand.

Carlson moved to amend Condition #1.1.5 and Condition #1.5 to change from internal "driveway" connection to internal "pedestrian" connection. Upon further discussion, this amendment became part of the main motion.

Buff Baker of Public Works reminded the Commission that the reason the original site plan was changed was because of Kelvin Korver's (the adjacent owner) objection to the location of that roadway. He did not want to be tied down with that location. The pedestrian connection might have the same problem. The amendment requires a pedestrian easement on someone else's property. There is no location that does not adversely affect the adjoining property owner. The roadway connection being required was upon approval of the other property owner and that is why the condition was put in place. The written agreement will still need to be required for the pedestrian connection.

Motion for conditional approval, with amendment to Condition #1.1.1 as requested by staff, and with amendment to Condition #1.1.5 and Condition #1.5 for a pedestrian connection, carried 7-0: Krieser, Larson, Carlson, Newman, Bills-Strand, Taylor and Schwinn voting 'yes'; Steward and Duvall absent.

WAIVER OF DESIGN STANDARDS NO. 02021

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 30, 2002

Carlson moved approval, seconded by Newman and carried 7-0: Krieser, Larson, Carlson, Newman, Bills-Strand, Taylor and Schwinn voting 'yes'; Steward and Duvall absent.

CHANGE OF ZONE NO. 3383

FROM AG AGRICULTURAL TO I-1 INDUSTRIAL

ON PROPERTY GENERALLY LOCATED

AT NORTH 70TH STREET AND ALVO ROAD.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 30, 2002

Members present: Larson, Carlson, Newman, Bills-Strand, Taylor and Schwinn; Krieser, Duvall and Steward absent.

Staff recommendation: Approval of H-2 for the western one-half of the parcel.

Proponents

1. Bill Blake, 1045 Lincoln Mall, appeared on behalf of the applicant, indicating that the applicant agrees with the staff recommendation pursuant to the letter from Peter W. Katt dated October 22, 2002.

There was no testimony in opposition.

Carlson indicated that he is still somewhat confused. He believes the letter which accompanied the original application is seeking to make it possible to have wedding receptions, auto shows, etc. Why do we need 50 acres of H-2 to accommodate these uses?

Blake is not sure how the line was decided for splitting the zoning. There are other requirements, such as spacing and parking, that go into it and they wanted to make sure there was enough of the H-2 zoning to accomplish that. Carlson assumed the solution would be to rezone the building where the activities are desired to be conducted.

Mike DeKalb of Planning staff referred to the aerial photo. There is a very land extensive layout as far as the soccer fields. We are trying to address multiple concerns. They have a variety of uses at this site. LPS is to the east of the buildings. There is a driveway right through the middle. You cannot cross AG land with a commercial use. The applicant also anticipates some extensive uses or outdoor activities such as flea markets in the parking lot. The west half appeared to be an easy split of the lot other than to try to wrap it around the buildings.

DeKalb further explained that the discussion that got us here was about uses that were being conducted that are not allowed as accessory uses to a special permit for recreational use in the AG district. The applicant chose to do the zone change rather than a text amendment. The applicant had asked for I-1 zoning, intending to reduce the size to meet their needs. Staff believes that this can be accomplished with the H-2 zoning. H-2 is a preferable district because it includes outdoor recreational facilities, indoor recreational facilities and both public and private schools. It appeared that the H-2 would allow all the uses the applicant was talking about but restricts industrial type uses. It was a compromise.

But, Carlson pointed out that H-2 is not a use permit zone. If the soccer field is moved, you've got a big H-2. DeKalb advised that the H-2 zoning does have a special permit for commercial uses over 20,000 sq. ft. The current Comprehensive Plan shows this area as green space and industrial uses to the north and to the west. The Northeast Treatment Plan is to the south. With no soccer field, the Comprehensive Plan designation would have likely been industrial or commercial.

Carlson is not unsympathetic to the uses. It seems like a nice use. He just wants to make sure we're "not killing an ant with a steamroller".

Newman noted that the Health Department is requesting a statement in writing from the applicant that specific uses will not be allowed but apparently this cannot be made a requirement in the H-2 zoning. DeKalb suggested that the H-2 is a straight zoning district. He believes that any tenants would make protections within their lease agreement.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**October 30, 2002**

Bills-Strand moved approval of the staff recommendation for H-2 zoning on the western half of the parcel, seconded by Schwinn.

Carlson trusts that staff would have found a different solution if there was one.

Larson is also confused. We're doing some pretty heavy rezoning for a small issue but apparently there is no other way.

Schwinn agrees that this seems to work out the best and because the Comprehensive Plan shows this area as industrial and with the Northeast Treatment Plant right next door, this would appear to be the appropriate zoning no matter what happens. If it was a blank slate, he believes this is what the Commission would do anyway.

Motion to approve the staff recommendation for H-2 zoning on the western half of the parcel carried 6-0: Larson, Carlson, Newman, Bills-Strand, Taylor and Schwinn voting 'yes'; Krieser, Steward and Duvall absent.

There being no further business, the meeting was adjourned at 2:50 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on November 13, 2002.

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